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describe the records sought with sufficient specificity to permit identification, and (4) must state that the requester promptly will pay the fees chargeable under this regulation. Provided, however, that when the requester places an inadequate limit on the amount he will pay or the requester has failed to make payments for previous requests, the NSF may require advance payment in accordance with § 612.12(d) of this part except in cases when fees have been waived or reduced in accordance with § 612.13 of this part.

(c) *Place of request.* Any request for records under FOIA shall be addressed to the National Science Foundation, Office of General Counsel, 4201 Wilson Boulevard, Arlington, VA 22230, except that requests for records maintained by the Office of the Inspector General may be addressed to either the Office of General Counsel, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 or to the Office of the Inspector General, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. A request which meets the requirements of paragraph (b) of this section and is properly addressed will be deemed received on the date of arrival in the Office of General Counsel or the Office of the Inspector General.

(d) *Time for appeal.* A person whose request has been denied or partially denied may initiate an appeal by filing a request for review within ten days of the receipt of the denial, Saturdays, Sundays, legal public holidays, and the date of receipt excluded.

(e) *Form of appeal.* The appeal shall include a copy of the written request and the denial together with any written argument the requester wishes to submit, and shall be signed by the requester.

(f) *To whom appeal is made.* An appeal shall be addressed to the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

(g) *Decisions on appeal.* Decisions on appeal shall be made by the General Counsel in writing within 20 days (excepting the date of receipt, Saturdays, Sundays, and legal public holidays) from receipt of the appeal. If the decision is in favor of the requester it shall

order the record made available promptly to the requester. If adverse to the requester in whole or in part it shall briefly state the reasons and notify the requester that he may seek judicial review of the decision pursuant to paragraph (4) of section 552(a), title 5, United States Code.

[40 FR 12793, Mar. 21, 1975, as amended at 49 FR 23049, June 4, 1984; 56 FR 47416, Sept. 19, 1991; 59 FR 37438, July 22, 1994; 61 FR 51022, Sept. 30, 1996]

§ 612.4 Copies of records.

If a requested record is to be disclosed, a copy will be furnished the requester as promptly as possible provided payment of fees has been arranged, or has been waived pursuant to § 612.13 of this part. Records will not be released for copying.

[56 FR 47416, Sept. 19, 1991]

§ 612.5 Creation of records.

A record will not be created by compiling selected items from other documents at the request of a member of the public nor will a record be created by analysis, computation or other processing specifically for the requesting party. If such analysis or computation is available in the form of a record, copies shall be made available as provided in this regulation.

[40 FR 12793, Mar. 21, 1975]

§ 612.6 Confidential commercial information—notice.

(a) *In general.* Commercial information provided to the NSF by a submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section.

(b) *Definitions.* The following definitions are used in reference to this section:

Commercial information means information provided to the NSF by a submitter that arguably is protected from disclosure under section b(4) of the Freedom of Information Act, 5 U.S.C. 552(b)(4) and § 612.8(a)(4) of this part.

Submitter means any person, organization, or entity who provides commercial information, directly or indirectly, to the NSF. The term includes, but is

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not limited to, corporations, state governments and foreign governments.

(c) *Designation of commercial information.* Submitters of commercial information shall use good-faith efforts to designate, by appropriate markings, either at the time of submission or within a reasonable time thereafter, those portions of their submissions which they deem to be protected from disclosure under 5 U.S.C. 552(b)(4) and §612.8(a)(4) of this part. Such designations shall be deemed to have expired ten years after the date of the submission unless the submitter requests, and provides reasonable justification for, a designation period of greater duration.

(d) *Notice to submitters.* The NSF shall, to the extent permitted by law, provide a submitter with written notice of a Freedom of Information Act request or administrative appeal encompassing its commercial information wherever required under paragraph (e) of this section, except as provided for in paragraph (f) of this section. Such written notice, given in order to afford the submitter an opportunity to object to disclosure pursuant to paragraph (g) of this section, shall be given within a reasonable time after NSF's receipt of the Freedom of Information Act request or administrative appeal, consistent with statutory requirements, and shall either describe the exact nature of the commercial information requested or provide copies of the records or portions thereof containing the information. The requester also shall be notified that notice and an opportunity to object are being provided to a submitter.

(e) *When notice is required.* Notice shall be given to a submitter whenever:

(1) The information has been designated in good faith by the submitter as information deemed protected from disclosure under 5 U.S.C. 552(b)(4) and §612.8(a)(4) of this part, or

(2) The NSF has reason to believe that the information may be protected from disclosure under 5 U.S.C. 552(b)(4) and §612.8(a)(4) of this part.

(f) *Exceptions to notice requirements.* The notice requirements of paragraph (d) of this section shall not apply if:

(1) The NSF determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous, except that, in such case, the NSF shall send to the submitter written notice of any final administrative decision to disclose commercial information at least ten days prior to a specified disclosure date.

(g) *Opportunity to object to disclosure.* Through the notice described in paragraph (d) of this section, the NSF shall afford a submitter a reasonable time, consistent with statutory requirements, within which to provide the NSF with a detailed written statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of 5 U.S.C. 552(b)(4) and §612.8(a)(4) of this part, shall provide a detailed description of why the information is a trade secret or commercial or financial information that is privileged or confidential. This description shall explain why release of commercial or financial information would cause substantial harm to the competitive position of the submitter. Whenever possible, the submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the submitter. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA. When the submitter fails to object within the specified time or the objection appears obviously frivolous, the NSF shall provide the submitter with written notice pursuant to paragraph (f)(4) of this section.

(h) *Notice of intent to disclose.* The NSF shall consider a submitter's objections and specific grounds for non-disclosure prior to determining whether to disclose confidential information. Whenever the Foundation decides to disclose confidential information over the objection of a submitter, the NSF

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shall forward to the submitter a written notice which shall include:

(1) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(2) A description of the confidential information to be disclosed; and

(3) A specified disclosure date.

Such notice of intent to disclose shall be forwarded to the submitter at least ten days prior to the specified disclosure date and the requester shall be notified likewise.

(i) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of confidential information, the NSF shall promptly notify the submitter.

[56 FR 47416, Sept. 19, 1991]

§612.7 Agency actions on receipt of a properly presented request for record.

(a) *Monitoring of requests.* The NSF Office of General Counsel, or such other office as may be designated by the Director, will serve as the central office for internal administration of these regulations. For records maintained by the Office of Inspector General, that Office will control incoming requests made directly to it, dispatch response letters, and maintain administrative records. For all other records maintained by NSF, the Office of General Counsel, or such other office as may be designated by the Director, will control incoming requests, assign them to appropriate action offices, monitor compliance, consult with action offices on disclosure, approve unavoidable extensions, dispatch denial and other letters, and maintain administrative records.

(b) *Time for response.* The Foundation will seek to take appropriate agency action on a request within 10 days of its receipt (excepting the date of receipt, Saturdays, Sundays, and legal public holidays). If the record may exist only in a retired file which has been placed in storage or there is otherwise a need to search for and collect the requested records from field facilities or other establishments that are separate from the Foundation, NSF shall immediately notify the requester by letter that the record has been ordered from storage (or is otherwise

being sought) and that the time limit for acting on the request is extended by the length of time required to obtain the record. The letter will also give the date on which a determination is expected to be dispatched. If the request seeks a voluminous amount of separate and distinct records requiring an unusual length of time for search, collection, and appropriate examination, and determination on the request cannot be made within 10 working days after agency receipt, NSF shall within such ten-day period furnish to the requester written notice extending the period for not more than ten working days. This notice shall set forth the reasons for such extension and the date on which a determination is expected to be dispatched. If the record has not been obtained and examined and notice of the determination whether to comply with the request has not been given by the last day of the period as extended, the requester shall be notified on that last day that the request is denied because the record has not yet been found and examined. Such denial shall state that NSF will reconsider the denial as soon as the search and examination is complete, which should be within a specifically stated number of days, but that the requester may, if he wishes, file an administrative appeal as provided in §612.3 of this regulation. This same procedure for extending the period shall be followed if the nature of the record requires consultation with another agency having a substantial interest in the determination of the request or requires consultation among two or more components of NSF having substantial subject-matter interest therein.

(c) *Records containing commercial information.* When the requested record contains confidential commercial information such as a successful proposal that was submitted to NSF, the NSF will normally contact, in accordance with §612.6 of this part, the organization that submitted the record in order to ask whether the submitter wished portions of the records withheld under any applicable exemptions. (The Foundation protects from disclosure pending proposals or unsuccessful proposals in any case.)